

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

BRITTANY APPLEBERRY,

Plaintiff,

v.

WHITTIER STREET HEALTH CENTER,
DUNKIN' INC., and
BOSTON UNIVERSITY SCHOOL OF
DENTAL MEDICINE

Defendants.

Civil Action No. 22-CV-11627

NOTICE OF REMOVAL

**TO THE HONORABLE JUDGES AND CLERK OF THE UNITED STATES DISTRICT
COURT FOR THE DISTRICT OF MASSACHUSETTS**

1. PLEASE TAKE NOTICE that, pursuant to 42 U.S.C. § 233(c), Defendant Whittier Street Health Center, by and through its attorney, Rachael S. Rollins, United States Attorney for the District of Massachusetts, hereby removes to this Court the above-entitled action based on the following:

BACKGROUND

1. On or about January 20, 2022, Plaintiff filed a Complaint in the Superior Court Department of the Trial Court, Suffolk Division, Commonwealth of Massachusetts, Docket No.2284CV00037 (“State Court Action”). Pursuant to 28 U.S.C. § 1446(a), a true and correct copy of the Complaint in the State Court Action is attached as Exhibit A.

2. In the State Court Action, Plaintiff named Whittier Street Health, Dunkin’ Corporation, and Boston University School of Dental Medicine as defendants. “Whittier Street

Health” is presumed to refer to Whittier Street Health Committee, Inc., d/b/a Whittier Street Health Center, (“WSHC”).

3. WHSC is a program grantee under 42 U.S.C. § 254B and deemed to be an employee of the Public Health Service (“PHS”) under the Federally Supported Health Centers Assistance Act (the “FSHCAA”), 42 U.S.C. § 233(g)-(n), and thus covered by the Federal Tort Claims Act (“FTCA”), 28 U.S.C. § § 1346(b), 2401(b), 2671-80, at the time of the incidents giving rise to this suit.

4. Under 42 U.S.C. § 233(a), as amended by the FSHCAA, the remedy against the United States provided by the FTCA is the exclusive remedy for medical malpractice claims brought against PHS employees for conduct committed while acting within the scope of their employment.

TIMELINESS OF REMOVAL

5. Upon information and belief, the Complaint has never been properly served on the United States pursuant to Federal Rule of Civil Procedure 4(i).

6. This Notice of Removal is thus timely because it is filed within 30 days of “service or otherwise” pursuant to 28 U.S.C. § 1446(b).

JURISDICTION

7. This Court has jurisdiction over this action pursuant to 42 U.S.C. § 233(c), which provides that the United States may remove a tort action commenced in State court against a PHS employee at any time before trial when a defendant was acting with the scope of his employment for an entity deemed to be part of the PHS, as in this case.

VENUE

8. Venue lies in this Court pursuant to 42 U.S.C. § 233(c).

9. Written notice of the filing of this Notice of Removal will be filed with the Clerk of the Suffolk County Trial Court Department, Commonwealth of Massachusetts. A copy of the notice will be sent to Plaintiff (who is proceeding *pro se*)¹ and counsel for the non-federal defendant on whose behalf an appearance has been entered.

10. Pursuant to Local Rule 81.1(a), the United States will request from the Clerk of the Suffolk County Trial Court certified copies of all records and proceedings in the State Court Action and certified copies of all docket entries, including a copy of this Notice of Removal, and will file the same with this Court within twenty-eight (28) days after filing of this Notice of Removal unless not provided by the state court within that time (in which case this Court will be notified and an extension sought).

WHEREFORE, Defendant Whittier Street Health Committee, Inc. hereby removes the State Court Action currently pending in the Suffolk County Trial Court to this Honorable Court.

Respectfully submitted,

RACHAEL S. ROLLINS
United States Attorney

Date: September 23, 2022

By: /s/ Thomas E. Kanwit
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CERTIFICATE OF SERVICE

¹ Government counsel has conferred with Plaintiff regarding the nature of removal to federal court and Plaintiff's option to dismiss the federal defendant and remain in state court. Plaintiff indicated she understood but did not wish to dismiss WSHC at this time.

I hereby certify that the foregoing document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and copies will be sent via email and/or first class mail, postage prepaid.

Plaintiff:

Brittany Appleberry
2 Waverly St., # 305
Boston, MA 02119

Defendant Boston University School of Dental Medicine:

William Burke, Esq.
Prince Lobel Tye, LLP
One International Place, Suite 3700
Boston, MA 02110

Defendant Dunkin' Corporation:

Christopher L. Jefford, Esq.
Kiernan Trebach
40 Court Street, 3rd Floor
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Date: September 23, 2022

/s/ Thomas E. Kanwit
Thomas E. Kanwit
Assistant United States Attorney